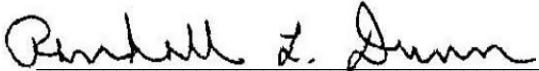


Below is an Opinion of the Court.

  
RANDALL L. DUNN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re:	)	
	)	Bankruptcy Case
James Joel Holman and Candice	)	
Evangeline Holman,	)	No. 14-35381-rld7
	)	
Debtors.	)	
<hr/>		
Dwight and Laura Daniels,	)	
husband and wife,	)	Adversary Proceeding
	)	No 14-03285-rld
Plaintiffs,	)	
	)	
v.	)	MEMORANDUM OPINION
	)	
James Joel Holman and Candice	)	
Evangeline Holman,	)	
	)	
Defendants.	)	

This adversary proceeding ("Adversary Proceeding") was tried before me (the "Trial") on Thursday, August 13, 2015. The plaintiffs, Dwight and Laura Daniels (the "Daniels"), asserted exception to discharge claims against the debtor defendants, James and Candice Holman (the "Holmans"), under 11 U.S.C. §§ 523(a)(2)(A) - fraud, and 523(a)(2)(B) -

1 false financial statement.<sup>1</sup> Prior to the Trial, I granted partial  
2 summary judgment in favor of Mrs. Holman on the Daniels' § 523(a)(2)(A)  
3 claim but reserved judgment on their § 523(a)(2)(B) claim against her.

4 During the Trial, I listened carefully to witness testimony and  
5 the arguments of counsel. Following the Trial, I have reviewed my notes  
6 from the Trial, the admitted exhibits and the parties' Trial memoranda.  
7 I further have taken judicial notice of relevant entries on the docket  
8 and documents filed in the Adversary Proceeding and in the Holmans' main  
9 chapter 7 case for the purposes of confirming and ascertaining facts not  
10 reasonably in dispute. Federal Rule of Evidence 201; In re Butts, 350  
11 B.R. 12, 14 n.1 (Bankr. E.D. Pa. 2006). I have considered the testimony  
12 and arguments presented by the parties. In addition, I have reviewed  
13 relevant authorities, both as cited to me by counsel for the parties and  
14 as located through my own research.

15 Based on that review and consideration, I have come to a  
16 decision. The findings of fact and conclusions of law stated in this  
17 Memorandum Opinion constitute my findings and conclusions for purposes of  
18 Fed. R. Civ. P. 52(a), applicable in this Adversary Proceeding under Fed.  
19 R. Bankr. P. 7052.

#### 20 Facts from the Evidence

21 Mr. Daniels comes from a background of 25-30 years in the  
22 insurance business. Mrs. Daniels has worked as an escrow officer but  
23 never has been an owner, officer or loan officer with a bank.

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24  
25 <sup>1</sup> Unless otherwise indicated, all chapter and section references are  
26 to the federal Bankruptcy Code, 11 U.S.C. §§ 101-1532. The Oregon  
Revised Statutes (2013) are referred to as "ORS."

1           In early 2011, Dwight Daniels was introduced to James Holman by  
2 a mutual friend. The Daniels had funds that they wished to invest, and  
3 the Holmans apparently owned a business that met the Daniels' criteria  
4 for investment. The parties had never met before they interacted in the  
5 transaction that is the subject of this Adversary Proceeding.

6           Mr. Daniels' understanding was that the Holmans' business,  
7 Pacific Courier Services, LLC ("PCS"), was in a cash crunch and needed  
8 loan funds "to get [the business] over the hump." There was some  
9 wrangling with respect to Mr. Holman's testimony, both at Trial and in  
10 his deposition, as to whether PCS was in "financial distress" in early  
11 2011. However, Mr. Daniels testified, without contradiction, as to his  
12 understanding that the proceeds from the loan the Daniels were being  
13 asked to make were going to be used for operating expenses, including  
14 business payroll, among other things. At or about the time that the loan  
15 transaction closed, Mr. Holman emailed Mr. Daniels requesting to know  
16 when a wire transfer was being made "so I can immediately transfer to PCS  
17 . . . thanks for understanding and time is of the essence to some  
18 degree." See Exhibit 1, at 1. In these circumstances, I find that Mr.  
19 Holman's business had a need for funds that was at least pressing.

20           In any event, loan negotiations proceeded fairly quickly by  
21 telephone and email between Mr. Holman and Mr. Daniels. The agreed loan  
22 amount was \$300,000 ("Loan"). Mr. Holman apparently offered to pay  
23 interest of as high as 15-20% on the Loan, but the Daniels felt those  
24 rates were "too high" and ultimately agreed on 10% interest. See Exhibit  
25 3; Exhibit 14, at 2. Exhibit 3 is a copy of Mr. Daniels' hand-written  
26 notes setting forth the terms of the proposed Loan as he understood them.

1 The Loan would be paid "interest only" for three years, at the end of  
2 which term, the Loan would be payable in full. The Daniels would retain  
3 "2 Points" (\$6,000) and send funds to the Holmans in the amount of  
4 \$294,000, although interest would accrue on the entire \$300,000 Loan  
5 amount. No prepayment penalty would apply. As security for repayment of  
6 the Loan, the Holmans would provide the Daniels with a trust deed on  
7 their home, an assignment of \$300,000 business life insurance on Mr.  
8 Holman, and a UCC filing on business assets. (Mr. Daniels indicated both  
9 in his notes and in his testimony that he had no familiarity with what a  
10 UCC-1 financing statement was or what it did.) See Exhibit 3.

11 At some point during the negotiations, Mr. Holman submitted an  
12 unsigned personal financial statement ("Financial Statement") to Mr.  
13 Daniels for himself and his wife. See Exhibit 2. It is not clear  
14 exactly when the Financial Statement was sent to Mr. Daniels, but it is  
15 dated as of February 1, 2011. See Exhibit 2, at 1. The balance sheet in  
16 the Financial Statement states that the Holmans had assets with a total  
17 value of \$6,814,500 and liabilities totaling \$866,000, for a net worth of  
18 \$5,948,500. Id. Of particular note in the balance sheet is the  
19 valuation of the closely held business at \$5,000,000. Mr. Holman  
20 testified that \$5,000,000 represented the gross value of the business.  
21 Yet, none of the liabilities of the business were included on the  
22 liabilities side of the balance sheet. Id. On page 2 of the Financial  
23 Statement, the Holmans' home was valued at \$775,000, with a mortgage  
24 balance of \$450,000, reflecting equity of \$325,000. See Exhibit 2, at 2.  
25 Mr. Holman's testimony confirmed that he reviewed and made arrangements  
26 to pay the family's bills and mortgage statements. Mr. Holman also

1 prepared the Financial Statement and sent it to Mr. Daniels without any  
2 input from Mrs. Holman. Mrs. Holman testified that she was not aware of  
3 the Financial Statement and did not believe that she saw it before it was  
4 sent to Mr. Daniels. She also testified that she did not recall any  
5 conversation with Mr. Holman about the Financial Statement.

6         The Daniels both testified that they reviewed the Financial  
7 Statement before deciding to make the Loan and relied on the Financial  
8 Statement in making their Loan decision. Mr. Daniels specifically  
9 testified that the Daniels would not have made the Loan if they had known  
10 that the figures on page 2 of the Financial Statement with respect to the  
11 value of the Holmans' residence versus the mortgage balance on it were  
12 inaccurate.

13         The Loan closed on or about the end of February 2011 and was  
14 documented by a promissory note ("Note"); a deed of trust ("Trust Deed")  
15 on the Holmans' residence property; a UCC-1 ("UCC-1") filing with the  
16 Oregon Secretary of State's office; and an Assignment of Life Insurance  
17 Policy ("Insurance Assignment"). See Exhibits 4, 5, 6 and 8. Consistent  
18 with the terms discussed between Mr. Daniels and Mr. Holman, the Note,  
19 dated February 24, 2011, is in the principal amount of \$300,000, with a  
20 loan fee of \$6,000, and bears interest at 10% per annum. Payments were  
21 to be made interest only for 36 months, with repayment of the entire Note  
22 balance due in full on April 1, 2014. See Exhibit 4, at 1. The Trust  
23 Deed, the only security expressly referenced in the Note (see Exhibit 4,  
24 at 2), was recorded on February 28, 2011. Both the Note and the Trust  
25 Deed were signed individually by Mr. and Mrs. Holman. However, Mrs.  
26 Holman testified that she did not remember any discussion about the terms

1 of the Loan, and she did not speak to either of the Daniels prior to the  
2 Loan being made.

3           The UCC-1, identifying PCS as the debtor, was filed with the  
4 Oregon Secretary of State's office on February 25, 2011. See Exhibit 6,  
5 at 1-2. The UCC-1 covered the following PCS collateral: "Inventory,  
6 Equipment, accounts receivables, deposit accounts, intangibles, general  
7 intangibles." See Exhibit 6, at 2. Apparently, the UCC-1 was filed by  
8 Todd Mitchell, whose law firm represented Mr. Holman's business. See id.  
9 The Insurance Assignment is dated August 8, 2011, and is signed by Mr.  
10 Holman and by Mrs. Holman as "Secretary of Integrity Transport Group."  
11 See Exhibit 8, at 1-2.

12           At approximately the time the Loan was funded, Mr. Holman  
13 provided a title insurance policy ("Title Insurance Policy") for the  
14 Holmans' residence to the Daniels. See Exhibit J. The Title Insurance  
15 Policy reflects two recorded deeds of trust on the residence property for  
16 loans in original principal amounts of \$326,000 (dating from 2004) and  
17 \$258,000 (dating from 2005). See Exhibit J, at 5-6.

18           Mr. Daniel testified that he arranged to send the Loan funds to  
19 the Holmans on February 28, 2011. Thereafter, the Holmans began making  
20 interest payments on the Loan. The parties' testimony is consistent that  
21 over time, the Holmans made at least 6 payments on the Loan obligation  
22 and did not ask for a deferral of any payments until August 2011.  
23 However, after the 60-day deferral period passed, the Holmans made only a  
24 few sporadic payments to the Daniels. Apparently, the last interest  
25 check received by the Daniels from the Holmans was in October 2012. See  
26 Exhibit 14, at 2.

1           In the meantime, unbeknownst to the Daniels, on August 18,  
2 2011, the UCC-1 was terminated. See Exhibit 9. Although the termination  
3 statement indicated that it was authorized by Mr. Daniels, he testified,  
4 consistent with the documentary evidence, that he knew nothing about the  
5 termination at the time. See Exhibit 9; Exhibit 13, at 3-4; Exhibit 14,  
6 at 2. Apparently, secured loans were made to PCS by AT&T Capital  
7 Services, Inc. and Greystone Capital in the fall of 2011 after the UCC-1  
8 was terminated. See Exhibit 15, at 3-6. While Mr. Holman consistently  
9 has denied any knowledge as to who authorized the UCC-1 to be terminated,  
10 the evidence submitted tends to indicate that the UCC-1 was terminated by  
11 counsel for PCS. See Exhibit 10; Exhibit 11, at 2; Exhibit 12, at 1;  
12 Exhibit 16.

13           Ultimately, PCS was liquidated in bankruptcy. The insurance  
14 covered by the Insurance Assignment apparently evaporated with it. In  
15 any event, the Insurance Assignment no longer is available as collateral  
16 for the Loan. The Holmans followed PCS into chapter 7 bankruptcy on  
17 September 23, 2014. Main Case Docket No. 1. They scheduled the Daniels  
18 as undersecured creditors on their Schedule D with a third trust deed  
19 secured interest in their residence property valued at \$25,000. See Main  
20 Case Docket No. 11. The Daniels filed the Adversary Proceeding timely on  
21 December 29, 2014. See Main Case Docket No. 43.

#### 22                           Jurisdiction

23           I have jurisdiction to decide the claims at issue in this  
24 Adversary Proceeding under 28 U.S.C. §§ 1334 and 157(b) (2) (I).  
25  
26

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## 2

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## 3

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## 22

23



1 (1) the debtor made a representation, or omitted to  
2 state a material fact(s) to the creditor;  
3 (2) at the time that the subject representation or  
4 omission was made, the debtor knew that the  
5 representation was false, or knew that the omission  
6 created a false statement, and the debtor was under a  
7 duty to disclose the omitted information;  
8 (3) the debtor made the subject representation or  
9 omission with the intention of deceiving the creditor;  
10 (4) the creditor justifiably relied; and  
11 (5) the creditor sustained damages as the proximate  
12 result of the representation or omission having been  
13 made.

14 See, e.g., Harmon v. Kobrin (In re Harmon), 250 F.3d 1240, 1246 n.4 (9th  
15 Cir. 2001); Turtle Rock Meadows Homeowners Ass'n v. Slyman (In re  
16 Slyman), 234 F.3d 1081, 1085 (9th Cir. 2000). The creditor bears the  
17 burden of proof on each of these elements by a preponderance of the  
18 evidence. Grogan v. Garner, 498 U.S. 279, 286-91 (1991); First Beverly  
19 Bank v. Adeeb (In re Adeeb), 787 F.2d 1339, 1342 (9th Cir. 1986).  
20 However, fraudulent intent can be established through the presentation of  
21 circumstantial evidence. See, e.g., In re Adeeb, 787 F.2d at 1343;  
22 Devers v. Bank of Sheridan, Mont. (In re Devers), 759 F.2d 751, 754 (9th  
23 Cir. 1985); and In re Johnson, 68 B.R. 193, 198 (Bankr. D. Or. 1986).

24 During argument at the Trial, I confirmed with the Daniels'  
25 counsel that the alleged misrepresentation upon which they based their  
26 § 523(a)(2)(A) claim was the representation by Mr. Holman that repayment  
of the Loan would be secured in part by the UCC-1 on business assets.  
The Daniels' argument is the offer of the UCC-1 as security was  
fraudulent or illusory in light of the subsequent termination of the UCC-  
1 without the Daniels' authorization or consent.

In light of the evidence presented, I conclude in favor of Mr.  
Holman on the Daniels' § 523(a)(2)(A) claim for the following reasons.

1 First, the UCC-1, at least initially, was granted to the Daniels as  
2 purported security for repayment of the Loan. It was filed with the  
3 Oregon Secretary of State's office on February 25, 2011, and by its  
4 terms, it covered PCS's inventory, equipment, accounts receivable,  
5 deposit accounts, intangibles and general intangibles. Thereafter, until  
6 August 2011, the Holmans made payments on the Loan on the terms specified  
7 in the Note. The termination of the UCC-1 occurred in August 2011. It  
8 may or may not be coincidence that termination of the UCC-1 occurred at  
9 approximately the same time that the Holmans first asked the Daniels for  
10 deferral of their payment obligations under the Note. However suspicious  
11 the circumstances of the unauthorized termination of the UCC-1, the  
12 evidence does not establish that Mr. Holman intended to terminate the  
13 UCC-1 and default on the Loan payments at the outset of the Loan  
14 transaction.

15 Second, the evidence presented tends to indicate that the  
16 negotiations leading up to the Loan through the documentation of the Loan  
17 transaction could be characterized as "the blind leading the blind" as to  
18 the UCC-1. Although by the time of the Trial, Mr. Holman's testimony  
19 reflected a rudimentary understanding as to how security interests were  
20 created and worked, he testified that he thought the UCC-1 was valid when  
21 it was filed. The Daniels both testified that they knew nothing about  
22 UCC's at the time that they agreed to make the Loan. In his handwritten  
23 notes setting forth proposed Loan terms, Mr. Daniels refers to "UCC" with  
24 the notation "no familiarity with." See Exhibit 3. I generally found  
25 the testimony of all of the parties at Trial to be credible, although I  
26 have some questions about Mr. Holman's testimony with respect to

1 termination of the UCC-1.

2 Finally, and perhaps most importantly, I cannot find from the  
3 evidence presented that the Daniels justifiably relied on the promise of  
4 Mr. Holman to provide the UCC-1 as security for repayment of the Loan.  
5 Since the Supreme Court's decision in Field v. Mans, 516 U.S. 59 (1995),  
6 "justifiable reliance" is recognized as an intermediate standard between  
7 the objective, "reasonable person" standard under § 523(a)(2)(B) and  
8 unqualified acceptance of whatever is communicated.

9 Justification is a matter of the qualities and  
10 characteristics of the particular plaintiff, and the  
11 circumstances of the particular case, rather than of  
the application of a community standard of conduct to  
all cases.

12 Id. at 71, quoting the Restatement (Second) of Torts (1976), § 545A,  
13 Comment b.

14 A person is "required to use his senses, and cannot  
15 recover if he blindly relies upon a misrepresentation  
16 the falsity of which would be patent to him if he had  
utilized the opportunity to make a cursory examination  
or investigation."

17 Id., quoting the Restatement (Second) of Torts (1976), § 541, Comment a.  
18 See Eugene Parks Law Corp. Defined Benefit Pension Plan v. Kirsh (In re  
19 Kirsh), 973 F.2d 1454, 1460 (9th Cir. 1992) (In determining the issue of  
20 justifiable reliance, "the court must look to all of the circumstances  
21 surrounding the particular transaction, and must particularly consider  
22 the subjective effect of those circumstances upon the creditor.").

23 In this case, the Daniels have freely admitted that when Mr.  
24 Holman offered them a UCC-1 as partial security for repayment of the  
25 Loan, they had no idea what a UCC-1 was or how it worked. A cursory  
26 investigation would have revealed to them that two steps generally are

1 required to create a security interest in personal property assets under  
2 the Uniform Commercial Code, in Oregon as elsewhere: 1) A security  
3 interest attaches when a debtor has signed a security agreement that  
4 grants a security interest in the subject collateral (see, e.g., ORS  
5 § 79.0203(1) and (2)(c)(A)); and 2) the security interest is perfected by  
6 filing a UCC-1 statement with the Oregon Secretary of State's office  
7 (see, e.g., ORS §§ 79.0310 and 79.0501(b)). The Daniels likewise would  
8 have been able to determine that if they made the Loan to the Holmans  
9 personally (as they did), the grant of a security interest in their favor  
10 by PCS might not be enforceable, as not supported by consideration.  
11 Further, they would have been able to determine that the priority of  
12 secured interests is determined in part by the order and timing of filing  
13 of UCC-1 statements (see, e.g., ORS § 79.0317(b)(B)), and if they  
14 conducted a UCC search, they might find that there was limited or no  
15 value of PCS assets available to secure repayment of the Loan in light of  
16 prior perfected security interests. However, they took none of these  
17 steps to ascertain whether the filing of the UCC-1 provided them with any  
18 real security for repayment of the Loan. In these circumstances, I  
19 cannot find that the Daniels justifiably relied on Mr. Holman's offer of  
20 the UCC-1 as security.

21       Accordingly, I cannot conclude in favor of the Daniels on their  
22 § 523(a)(2)(A) claim against Mr. Holman.

23 D. Section 523(a)(2)(B) - False Financial Statement

24       Section 523(a)(2)(B) excepts from discharge debts arising from  
25 the debtor's intentional use of a false financial statement on which the  
26 creditor reasonably relied. The elements to establish an exception to

1 discharge under § 523(a)(2)(B) are:

- 2 (1) the debtor made a representation of fact in writing;
- 3 (2) the representation was material;
- 4 (3) the debtor knew at the time that the representation was false;
- 5 (4) the debtor made the representation with the intention of deceiving the creditor;
- 6 (5) the creditor relied on the representation;
- 7 (6) the creditor's reliance was reasonable; and
- 7 (7) damages proximately resulted from the representation.

8 Siriani v. Northwestern Nat'l Ins. Co. (In re Siriani), 967 F.2d 302, 304  
9 (9th Cir. 1992) (citations omitted). Of particular relevance in this  
10 case, to establish the "intent to deceive" element, the creditor must  
11 show by a preponderance of the evidence "that the debtor's alleged false  
12 statement in writing was either knowingly false or made so recklessly as  
13 to warrant a finding that the debtor acted fraudulently." 4 Collier on  
14 Bankruptcy ¶ 523.08[2][e][ii] (Alan N. Resnick & Henry J. Sommer eds.,  
15 16th ed.), citing Insurance Co. of N. Am. v. Cohn (In re Cohn), 54 F.3d  
16 1108, 1118-19 (3d Cir. 1995); Investors Credit Corp. v. Batie (In re  
17 Batie), 995 F.2d 85, 90 (6th Cir. 1993); Bank One Lexington v. Woolum (In  
18 re Woolum), 979 F.2d 71, 73 (6th Cir. 1992), cert. denied, 507 U.S. 1005  
19 (1993); Driggs v. Black (In re Black), 787 F.2d 503, 506 (10th Cir.  
20 1986). See Barlaam v. Financial Services Vehicle Trust (In re Barlaam),  
21 2014 WL 3398381 (9th Cir. BAP July 11, 2014) ("Besides serving to impute  
22 the knowledge of falsity, a finding that a debtor acted with gross  
23 recklessness satisfies the element of intentional deception in  
24 § 523(a)(2)(B)(iv).") (emphasis in original and citations omitted). As  
25 with § 523(a)(2)(A), the creditor bears the burden of proof by a  
26 preponderance of the evidence to establish each of the § 523(a)(2)(B)

1 elements. Grogan v. Garner, 498 U.S. at 286-91.

2 At the outset, the Financial Statement made a number of written  
3 representations as to the Holmans' financial situation in February 2011.  
4 The representations as to the Holmans' net worth and the values of their  
5 real estate holdings and the encumbrances against them in the Financial  
6 Statement were material. The Daniels relied on the information included  
7 in the Financial Statement in deciding to make the Loan, and when the  
8 Holmans could not repay the Loan, damages resulted to the Daniels from  
9 their reliance on the representations in the Financial Statement.  
10 Accordingly, I find that elements (1), (2), (5) and (7) have been  
11 satisfied.

12 Mr. Daniels testified that he had no reason not to believe the  
13 information in the Financial Statement was accurate. Mr. Holman had been  
14 introduced to him by a respected friend as a legitimate businessman  
15 looking for loan financing. Mr. Holman freely submitted the Financial  
16 Statement as an inducement to the Daniels to make the Loan, without  
17 prodding. The Financial Statement stated that the Holmans had a net  
18 worth of \$5,948,500, providing an abundance of reasons to believe that  
19 the Holmans had the resources to repay a loan of \$300,000. I find in  
20 these circumstances that the Daniels' reliance on the representations in  
21 the Financial Statement was reasonable, satisfying element (6).

22 That leaves elements (3) and (4), whether the Holmans knew that  
23 the representations in the Financial Statement were false when it was  
24 submitted to the Daniels or that the representations were so recklessly  
25 made as to satisfy that standard, and whether those representations were  
26 made with the intent to deceive the Daniels. It is a truism (Perry Mason

1 aside) that parties virtually never admit at trial that they acted with  
2 an intent to deceive or defraud the opposing party. "We acknowledge that  
3 because a debtor will rarely, if ever, admit that deception was his  
4 purpose, this fourth element of § 523(a)(2)(B) is extremely difficult for  
5 a creditor to prove by direct evidence." In re Cohn, 54 F.3d at 1118.  
6 "Because a debtor is unlikely to testify directly that his intent was  
7 fraudulent, the courts may deduce fraudulent intent from all the facts  
8 and circumstances of a case." In re Devers, 759 F.2d at 754.

9         On these elements, the paths of Mr. and Mrs. Holman diverge.  
10 Mr. Holman prepared the Financial Statement without any input from his  
11 wife, and he sent the Financial Statement to Mr. Daniels without  
12 discussing it with his wife. Neither of the Holmans signed the Financial  
13 statement, even though it was submitted in both their names. Mrs. Holman  
14 testified that she was not aware of the Financial Statement at the time  
15 it was sent to Mr. Daniels.

16         While the testimony at Trial focused on the market value for  
17 the Holmans' residence and the mortgage balance against it stated in the  
18 Financial Statement, the information included in the Financial Statement  
19 suffers from a much more fundamental inaccuracy. In the balance sheet on  
20 the first page of the Financial Statement, Mr. Holman valued his closely  
21 held business at \$5,000,000. One ordinarily would assume in a net worth  
22 calculation that the \$5,000,000 value without any corresponding  
23 liabilities included in the balance sheet represented equity value.  
24 However, Mr. Holman testified that the \$5,000,000 value represented the  
25 gross value of his business. And he testified that he arrived at that  
26 figure from an appraisal for the business that he obtained one or two

1 years earlier at \$4.1-\$4.2 million. I don't question in general the  
2 logic of assuming that the value of an expanding business might have  
3 increased over time, but not to include the liabilities of the business  
4 on the opposite side of the ledger from the estimated gross value was  
5 grossly misleading. From the Financial Statement, the Daniels were given  
6 the representation that repayment of their proposed \$300,000 Loan was not  
7 an issue because on the first page of the Financial Statement, they were  
8 told that almost \$6,000,000 of net worth protected them. As an  
9 experienced businessman, Mr. Holman had to know better.

10 I have given Mr. Holman the benefit of the doubt as to his lack  
11 of knowledge of what giving a UCC-1 as security meant in this  
12 transaction. As a layman, even with substantial business experience, I  
13 do not assume that he had a working knowledge of the requirements to  
14 create a security interest under Article 9 of the Uniform Commercial  
15 Code. However, he is entitled to no such benefit with respect to the  
16 balance sheet he prepared in the Financial Statement. By its terms, a  
17 "balance sheet" sets forth a person or entity's assets v. liabilities to  
18 arrive at net worth. Based on his experience as a business owner, Mr.  
19 Holman had to know that including the value for his business that he did  
20 on the Financial Statement without including its corresponding  
21 liabilities grossly overstated the net value of his business, resulting  
22 in a very material overstatement of the Holmans' net worth. I find that  
23 driven by his need to close a loan transaction quickly with the Daniels,  
24 he was inexcusably reckless in including the value for his business that  
25 he used in the Financial Statement. The circumstances supporting that  
26 finding include that Mr. Holman apparently had exhausted his



1 possibilities for obtaining more conventional financing for PCS. If he  
2 had not, why would he be approaching private lenders like the Daniels and  
3 offering them "hard money" rates of interest? In addition, in these  
4 circumstances, it is reasonable to assume that PCS already had borrowed  
5 what it could from more conventional sources, but none of those  
6 obligations are reflected on the Financial Statement balance sheet. Mr.  
7 Holman had a pressing need for funds for his business, and he put the  
8 Financial Statement together and submitted it with reckless indifference  
9 to the truth of the numbers he presented in it to induce the Daniels to  
10 make a lending decision quickly in his favor. It was Mr. Holman who  
11 communicated to Mr. Daniels that "time was of the essence."

12           The value for and mortgage balance against the Holmans' home  
13 stated on page 2 of the Financial Statement reinforce the point: I find  
14 Mr. Holman essentially credible in his overly optimistic valuation of the  
15 home based on the listing price for the property across the street and  
16 his testimony about improvements to the home that had been made.  
17 However, his statement that the "mortgage balance" was \$450,000, when the  
18 trust deed balances owed at the time actually totaled over \$542,000 (see  
19 Exhibit 10, Response to Interrogatory No. 6), was recklessly indifferent  
20 to the truth when he had ready access to the current monthly statements  
21 as the person responsible for paying the bills.

22           Ultimately, I find that the Financial Statement prepared and  
23 submitted to the Daniels by Mr. Holman included net worth and home equity  
24 values that were grossly and recklessly inflated to induce the Daniels to  
25 arrive at a quick decision to make the Loan to the Holmans. In these  
26 circumstances, I conclude that elements (3) and (4) are satisfied as to

1 Mr. Holman, and the Daniels are entitled to a judgment against him on  
2 their § 523(a)(2)(B) claim.

3 My conclusion is the opposite as to Mrs. Holman. She had  
4 nothing to do with the preparation of the Financial Statement. At the  
5 time, she was unaware that it was being prepared for submission to the  
6 Daniels. She never discussed it with Mr. Holman prior to its being  
7 presented, and there is no evidence that she knew that it was sent to the  
8 Daniels. She certainly did not discuss the representations in the  
9 Financial Statement with the Daniels at any point in time. She did not  
10 benefit personally from the Loan transaction, and the record is  
11 consistent that, for better or worse, she had no role in the financial  
12 transactions of the Holman family. I find in favor of Ms. Holman on the  
13 Daniels' § 523(a)(2)(B) claim. See, e.g., Sachan v. Huh (In re Huh), 506  
14 B.R. 257 (9th Cir. BAP 2014) (en banc).

15 Conclusion

16 Based on the foregoing findings, analysis and conclusions, Mr.  
17 Holman is entitled to a judgment in his favor on the Daniels'  
18 § 523(a)(2)(A) claim against him; the Daniels are entitled to a judgment  
19 in their favor against Mr. Holman on their § 523(a)(2)(B) claim against  
20 him; and Mrs. Holman is entitled to judgment in her favor on the Daniels'  
21 § 523(a)(2)(B) claim against her. A Judgment consistent with this  
22 Memorandum Decision will be issued contemporaneously.

23  
24 # # #

25 cc: R Hunter Bitner, III  
26 Darian Stanford  
Paul B Heatherman